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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-162

WILLIAM F. EDGECOMBE, JR.,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

On Application for a Writ of Certiorari to the Supreme Court of Louisiana

ORIGINAL BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION TO THE APPLICATION OF WILLIAM F. EDGECOMBE, JR. FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	2
FACTS	4
ARGUMENTS:	
I. THE SCIENTIFIC TESTS	7
II. IN-COURT IDENTIFICATION OF THE DEFENDANT	11
III. CAPTAIN REICHERT'S TESTIMONY	12
CONCLUSION	16
CERTIFICATE	17

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TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

This Brief is filed on behalf of the State of Louisiana, and the citizens of the Parish of St. Bernard, State of Louisiana, to express opposition to the allegations of the Brief filed on behalf of William F. Edgecombe, Jr.

STATEMENT OF THE CASE

On April 23, 1970, defendant-appellant, William F. Edgecombe, Jr. was indicted by the St. Bernard Parish Grand Jury for the Parish of St. Bernard, for aggravated rape and aggravated kidnapping of one Jo Ann Buras on January 20, 1970, defendant having been arrested and charged with said crimes on April 17, 1970.

On April 27, 1970, defendant was afforded an extensive preliminary hearing relative to his application for bail, and on April 28, 1970, the court rendered judgment denying bail — finding that the proof was evident and the presumption great that defendant was guilty of a capital offense.

On May 4, 1970, defendant was arraigned and pleaded "not guilty" and "not guilty by reason of insanity" to each charge.

On June 1, 1970, the court heard extensive testimony and argument relative to defendant's prayer for oyer, motion to suppress evidence and motion to quash.

On October 19, 1970, defendant withdrew his pleas of "not guilty by reason of insanity", and elected to stand solely on his pleas of "not guilty" on each charge.

The two cases were consolidated for trial on motion of the defense, and jury trial began on October 20, 1970. After hearing eighteen (18) witnesses for the state and six (6) witnesses for the defense, the jury was submitted the case on October 29, 1970, and on that

day returned verdicts of "guilty as charged" to aggravated rape and aggravated kidnapping.

The defense filed a Motion for a New Trial and a Motion in Arrest of Judgment, which were heard by the court on November 13, 1970, and denied by the court on November 16, 1970.

On November 24, 1970, the court pronounced a sentence of capital punishment in each case.

On February 15, 1971, the court, on Defendant's motion, allowed the defendant to proceed with his appeal to the Louisiana State Supreme Court, in forma pauperis, and ordered that the transcript of the record be prepared at the expense of the Parish of St. Bernard.

The Louisiana State Supreme Court unanimously affirmed the defendant's convictions, but ordered the district court to reduce his sentences to life imprisonment instead of death, in view of *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726 (1972).

On May 25, 1973, the district court resentenced defendant to life imprisonment on each charge, but made the sentences *concurrent*, instead of consecutive.

Subsequently, original defense counsel was replaced by present defense counsel.

On April 19th, 1973, new defense counsel's application for rehearing with the Louisiana State Supreme Court was denied, leading to the present application for a Writ of Certiorari.

FACTS

Testimony at trial and at the bail hearing revealed that on the night of January 20, 1970, one Jo Ann Buras (Wigley) was forced at gunpoint in St. Bernard Parish to enter an automobile driven by a then unknown assailant, after she had alighted from a bus on her way home from work. The armed assailant drove to a secluded section in St. Bernard Parish where he raped her. At the time of this incident she was 17 years of age, unmarried, and a virgin.

Later on that same night and *before* the assailant's identity was known, she gave a detailed description of the assailant, his automobile, and the gun, to Captain Reichert of the St. Bernard Parish Sheriff's Office, and also made a "composite" picture of the assailant's face.

Armed with these tools Captain Reichert began an extensive search and surveillance for a person and automobile fitting the descriptions, together with other St. Bernard Parish Deputies and members of the New Orleans Police Department who were also searching for a person and automobile of this description relative to similar incidents in New Orleans.

On April 17, 1970, while still maintaining his surveillance, Captain Reichert saw and recognized the person he was seeking (later identified as the defendant herein William F. Edgecombe, Jr.) and automobile matching the descriptions, approaching two young girls in the vicinity of the St. Bernard Bank, in Arabi, St. Ber-

nard Parish, Louisiana. The defendant took off at a high rate of speed when Captain Reichert approached him, and a high speed chase ensued, in which the defendant ran through a red light at Mehle Street, and into New Orleans on St. Claude Avenue.

New Orleans Patrolmen Bruno and Landon, who were also on the lookout for a person and automobile of the same description as that of the defendant and his automobile, observed the defendant's reckless operation of his vehicle at a high rate of speed, and also took off after him in close pursuit. The New Orleans Police vehicle forced defendant to stop, and they apprehended and hand-cuffed the defendant as Captain Reichert recovered a small black pistol which was in clear view on the floorboard of defendant's automobile.

The defendant was subsequently booked, indicted by the St. Bernard Parish Grand Jury, tried and convicted of both aggravated rape and aggravated kidnapping of Jo Ann Buras (Wigley).

At the trial before a 12 man jury on October 20, 1970, the state produced testimony of two additional girls pursuant to Louisiana Revised Statute 15:445 and 446, who testified to identical incidents with the defendant. Before allowing these two girls to testify before the jury, the court heard their testimony outside the presence of the jury, and made a determination that their testimony was relevant, material, untainted and admissible.

Mary Munson testified that on January 27, 1970, a person whom she positively identified in court as the defendant drove up to her at a bus stop, in an automobile identical to defendant's and attempted to force her into his automobile with a pistol identical to the defendant's pistol, which was introduced into evidence.

Melany Carmouche testified that on April 9, 1970, a person whom she positively identified in court as the defendant, using the identical mode of operation as in the Buras and Munson incidents, in an automobile identical to defendant's, forced her into his automobile, using a pistol identical to defendant's, and forced her to commit an unnatural oral sex act upon him, at gunpoint.

Both girls, just as Jo Ann Buras (Wigley) did, positively identified the defendant in court, and also his automobile and gun; and further described the defendant's mode of operation as being identical in all three incidences.

The defense called witnesses in an unsuccessful attempt to establish an alibi, as the jury found the defendant "guilty" on each charge.

ARGUMENT ON THE QUESTIONS PRESENTED BY PETITIONER

The alleged constitutional questions posed in petitioner's application for Writ of Certiorari *simply do not exist* in this case!

1.

The Scientific Tests

In his brief petitioner herein accuses the state of deliberately withholding evidence which would have exculpated him at trial. The record of the proceedings proves these allegations to be false.

It must first be noted that opposing counsel's conclusion, that the bodily secretions examined by Captain Milton Cox, Criminalist of the Louisiana State Crime Lab, proved that the perpetrator of the crime was group "A" blood type, is erroneous. A reading of Captain Cox's entire testimony at trial relative thereto reveals that upon cross-examination by defense counsel Captain Cox *would give no definite scientific conclusion* as to the classification thereof:

> "Q. Mr. Cox, were any tests run other than for seminal fluid or blood on these particular objects?
> A. I ran one test for one other test on the kleenex. I ran a secreted (secretion) test.
> Q. What is that?
> A. Which determines whether or not the factors in the blood are present. In other words, your "A" and "B" factors.
> Q. Would you explain that to me?
> A. A secretor who has the same many factors which are present in the — for example, if a person, if he is a secretor, his saliva, perspiration and semen will have a group factor.

Q. What does that test prove?

A. I got a group "A". The person would have to have group "A" blood, one of the two people, that gives two possibilities.

Q. A secretive (secretion) test, is that from the blood or the seminal fluid?

A. The secretive (secretion) test which I ran was from the seminal fluid stain.

Q. Did you find any trace of any substance that was secreted by the female reproductive organs?

A. I know of no test to make such determination to identify a particular substance as coming from the female vagina. However, I didn't mention that if you have a mixture you could get a false reaction, but I could not say that this came from a female. There is no secretion from the vagina such as vaginal fluid secretion.

Q. You said if there was one it would give you a false —

A. In other words, the male and female have sexual relations and the male ejaculates into the female. The seminal fluid runs out on a sheet or something of this nature. Now, there we have a mixture of his seminal fluid plus her body fluid, which we cannot identify, but we could get a group false; we can from either one of those. This is why I did not — you have a mixture of blood and seminal fluid.

Q. Which could give a false reaction?

A. For a group "A" reaction — correction: for the reaction; suppose a group "O" secretor

had relations with a group "A" secretor. She could give you a group "A" even though he was a group "O" person.

Q. So other than the secretion test and the test to determine seminal fluid and blood you did no other tests?

A. No other tests."

Thus, from the record the following is evident:

(A) The secretion-grouping test was run on the kleenex only, and not on the clothes of the victim or the defendant;

(B) The secretion-grouping test was not conclusive because of the mixing of the body secretions of the two parties, *and was of no evidentiary value to either the State or the defendant.*

It must be further emphasized that neither before nor during the trial did the defendant ever disclose his blood-type to the state! Thus, even if the secretion-typing had been conclusive (which it was not) the state would not have been able to determine that it was exculpatory, since it did not know the defendant's blood type.

It is further submitted that, even if Captain Cox had been able to give a scientifically accurate blood type grouping to the secretions of the two parties on the kleenex, the defense cannot claim that it had no opportunity to present evidence to the jury concerning defendant's blood type. Defense counsel could have pro-

duced evidence of defendant's blood type if he had truly so desired. It is submitted that original defense counsel realized at trial that the secretion test on the kleenex was of no evidentiary value in this respect because of the mixing of the secretions of the two parties.

The decision of the Louisiana State Supreme Court in *State v. Square*, 257 La. 743, 244 So.2d 200 (1971) is directly applicable in this instance. *Square* held that defense counsel could not use unconfirmed allegations and accusations against the state in order to embark on a *"fishing expedition"* into the records of the state, or to ask the Court to "speculate" thereupon in reaching a decision:

> "... No effort was made then to demonstrate how the test results or content of the statements would benefit the defense. A vague charge of this kind, a fishing expedition in the true sense, may not serve to compel the state to disclose evidence in its possession in advance of trial. We are called upon to speculate the FBI report and the statements would benefit the defense — an improper basis for any responsible ruling."
> *State v. Square*, supra, pp. 220, 221.

Thus, we can clearly see that the scientific tests were inconclusive, and not exculpatory; and that they were not wrongly withheld by the state.

2.

In-Court Identification Of The Defendant

While it is true the defendant counsel objected to utilization of the testimony of two additional victims of the defendant at trial to prove system and intent, and to corroborate the testimony of Jo Ann Buras (Wigley), it must be emphatically noted that defense counsel at no time before or during the trial objected to the in-court *identification* of the defendant by the three victims.

Prior to the arrest of the defendant, and before his identity was known, each of the three girls described in detail the defendant, his automobile, his gun, and his modus operandi. The court considered the testimony of all three girls outside the presence of the jury and was satisfied that their testimony and identification of the defendant was untainted, relevant, material and admissible before the jury. It is submitted that there was never any doubt in the mind of the district attorney, the court and original defense counsel that defendant, William F. Edgecombe, Jr., was properly and independently identified as the assailant of each of the three girls.

Jo Ann Buras (Wigley) made her own positive in-court identification of the defendant, unobjected to by defense counsel. Her detailed description of the defendant and his automobile, and her making of the "composite" picture of his face, all done on the night of the kidnapping and rape, left no doubt in the minds of the jury that the person positively identified by her

in court — William F. Edgecombe, Jr. — was the person who kidnapped and raped her on the night of January 20th, 1970.

It should be further noted that the trial judge gave a lengthy charge to the jury relative to testimony tending to prove identity. This charge was most favorable to the defense which submitted no special charge relative thereto. Immediately following the said charge concerning identity the court further charged the jury that:

> "Testimony or evidence offered of acts of the defendant relating to incidents other than the acts charged *is not admissible to prove the offense charged.* In other words, you must be satisfied as to the guilt or innocence of the defendant *on the facts relating to the offense charged* in order to reach a decision". (Italics added).

Identity is a question of fact and the facts of this case overwhelmingly prove the identity of William F. Edgecombe, Jr. as the guilty party.

3.

Captain Reichert's Testimony

The objected-to testimony of Captain Reichert was merely to the effect that he was looking for a "subject" who had been described in detail to him, and that he was "staking out the bus lines" because this was the modus operandi of the "subject" for whom

he was looking. An examination of Captain Reichert's *complete* testimony reveals that opposing counsel's conclusions are totally erroneous.

We adopt in argument herein the following portion of the decision of the Louisiana State Supreme Court (Reported in its entirety at pp. 33-66 of Petitioner's Brief):

> ". . . the state, in attempting to show how the apprehension of the defendant was accomplished based on surveillance of particular locations for the presence of a particularly described person in a particularly described vehicle questioned the witness Capt. Louis Reichert as follows, to-wit:
>
> "By Mr. Livaudais:
>
> "Q. Did you maintain a surveillance during this period of time?
>
> "A. I did, sir.
>
> "Q. Did you continue looking for this person in this picture?
>
> "A. Yes, sir.
>
> "Q. Concerning the description of the automobile, did that change at all after it had been established by Jo Ann to you, the identity of the automobile as fixed in your mind?
>
> "A. We were looking for a '69 or '70 late model automobile; frost colored or mist colored green with a tear-shaped looking window with the window in the back shaped like a tear. Also, it had light green seat covers, with light green headrest, with a radio recessed in the

dashboard. The seat of this car was all in one. That means they didn't have any buckets or shift separating the passenger from the driver.

"Also, there was some type of seam coming down the seat in the front seat. Also, there was some type of medal hanging from the rear view mirror in the automobile.

"* * *

"Q. Now, Captain Reichert, did your investigation reach any conclusion?

"A. Yes, sir, we did.

"Q. What time of the evening were you back on this case?

"A. We were staking out the bus line between seven-thirty in the evening and eight-thirty or quarter to nine at night. And the reason we were doing that because we found that this suspect here was playing the bus lines.

"Mr. Fernandez:

"Objection, Your Honor, to this line of testimony, and I move at this time for a mistrial on the basis that this witness continually testifies to matters that have not been proven before this Court.

"The Court:

"Let me instruct the Jury that insofar as any conclusion that was drawn, the Jury is to completely disregard it. Remove it from its mind. Motion for a mistrial is denied.

"* * *

"The Defendant's objection was aimed at possible inferences by the witness that the de-

fendant may have committed other crimes, which inference would accordingly prejudice the Jury against the defendant and be in violation of his rights. The text of the answer certainly raises doubt as to whether any such inference was intended by the witness and it was apparently not an answer being solicited by the state. However, the Court in an abundance of caution sustained the objection and cautioned the Jury to disregard any conclusions that Capt. Reichert's answer may have inferred.

"The Court takes the position that, in the first place, the prosecution cannot be defeated by answer of a witness for which the prosecution is not responsible. Also, there is no showing that the rights of the defendant were prejudiced and, finally, the Court admonished the Jury to disregard any inference of additional crimes as was suggested by counsel for the defendant in making his objection.

"It is submitted that if there was error it was harmless error (LSA-C.Cr.P. Art. 921) and not a substantial violation of the rights of the defendant and, accordingly, bill of exception No. 18 is without merit."

CONCLUSION

The questions posed by the application for writ of certiorari are not substantial, and are merely questions of fact which have been resolved favorably and unanimously in favor of the state by the trial court, the jury and the Louisiana State Supreme Court.

The defendant has utilized every available remedy to him throughout these proceedings, and was afforded a lengthy and fair trial. He has benefitted greatly from the decision of this court in *Furman v. Georgia*, which resulted in reduction of his punishment from death to life imprisonment on each charge, and further from the leniency of the Louisiana District Court in making his sentences run concurrently instead of consecutively.

On behalf of the people of the Parish of St. Bernard, State of Louisiana, whose wives and daughters were terrorized by the criminal actions of William F. Edgecombe, Jr., I voice strong opposition to his application for a writ of Certiorari. This opposition is made out of concern for the imbalance of our laws of criminal procedure, which imbalance constantly erodes the achievements of law enforcement officials in our country, and gives disproportionate protection to those convicted of crime, in relation to the rights of our society and citizens to be free from crime.

The Jury found the defendant guilty; the proceedings are free from reversible error; and the application for a writ of Certiorari should, therefore, be denied.

Respectfully submitted,

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CERTIFICATE

I, CHARLES H. LIVAUDAIS, Attorney for the State of Louisiana, Respondent herein, hereby certify that I have served a copy of the foregoing Brief upon Petitioner herein, by mailing same, postage prepaid, to his counsel of record, Milton P. Masinter, 550 South Broad Street, New Orleans, Louisiana 70119, prior to the filing thereof in the United States Supreme Court.

CHARLES H. LIVAUDAIS
Attorney for Respondent